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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter of)
)
Petition for Rule Making Filed by)
Pacific Bell Mobile Services) RM-8643
Regarding a Plan for Sharing)
the Costs of Microwave Relocation)

To: The Commission

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COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

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The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.405 of the Rules and Regulations of the Federal Communications Commission (Commission), respectfully submits the following Comments in response to the Petition for Rule Making (Petition) filed by Pacific Bell Mobile Services (PacBell), on May 5, 1995 concerning the Commission's plan to relocate incumbent microwave users from the frequency band 1850-1990 MHz.

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of

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petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API's Telecommunications Committee is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications facilities, point-to-point microwave systems in the Private Operational-Fixed Microwave Service ("POFS") on assignments from the frequency band 1850-1990 MHz. These telecommunications facilities are used to support the search for and production of oil and natural gas. Such systems are also utilized to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, and for the processing and refining of these energy sources, as well as for their ultimate delivery to industrial, commercial, and residential customers. The facilities licensed to API's members are therefore essential to the provision of our nation's energy sources.

3. API members utilize their POFS systems to serve a variety of vital point-to-point and point-to-multipoint telecommunications requirements, including communications between oil and gas exploration and production sites, for supervisory control and data acquisition (SCADA) systems, to communicate with refineries, and to extend circuits to pipeline pump and compressor stations. The oil and gas industries were among the pioneers in the development of private microwave, utilizing their systems to remotely monitor and operate petroleum and natural gas pipelines. Accordingly, the API Telecommunications Committee participated in the Commission's earliest rule making proceeding that addressed private microwave use of the spectrum;^{1/} and it has continued to be an active participant in every subsequent major proceeding affecting the POFS.

4. Consistent with its active involvement in telecommunications regulatory issues, the API Telecommunications Committee participated in nearly every phase of the Commission's Docket Nos. 90-314 and 92-9 that led to the reallocation of spectrum in the 2 GHz range for emerging technologies, including Personal Communication

^{1/} In re Allocation of Frequencies in the Bands Above 890 MHz, Report and Order, Docket No. 11866, 27 F.C.C. 359 (1959).

Services ("PCS"), and to the adoption of reaccommodation provisions for those licensees required to vacate their assignments for new spectrum uses. Rule changes adopted in these two reaccommodation proceedings provide certain rights and establish certain requirements for incumbents and PCS licensees. The cornerstone of these rights and requirements is the rule that PCS licensees must, in the final analysis, fully reimburse incumbents for the cost of involuntarily relocating to comparable facilities. An equally important rule establishes a two-year period in which to negotiate the monetary and logistical terms of a voluntary relocation.

5. API members own and operate POFS systems on authorized assignments in the PCS A, B, C, D, E and F blocks. Many of API's members operate POFS systems which extend across more than one state and traverse numerous Major Trading Areas and Basic Trading Areas. To avoid disruption of these vital systems, it is important for these API members to relocate their entire systems, or large portions thereof, simultaneously rather than to relocate separate links in piecemeal fashion. API supports the concept of creating spectrum interference rights, but urges that the rights be broadened to include entire systems and large portions of systems. As incumbent licensees, API members urge the Commission to allow its established reaccommodation provisions to operate in the marketplace so

that incumbent licensees may freely negotiate during the two-year voluntary negotiation period.

II. COMMENTS

6. PacBell's Petition specifically addresses the "free-rider" problem which occurs when more than one PCS licensee benefits from the relocation of a microwave link, but only one PCS licensee pays for that relocation. Since there currently is no mechanism in the Commission's rules to share the cost among those PCS licensees who benefit from a microwave relocation, PacBell asserts that PCS implementation may be delayed by the reluctance of one entity to clear spectrum for the benefit of others. PacBell proposes a rule change, therefore, to permit the initial PCS licensee which relocates a microwave incumbent to acquire that incumbent's right to protection from interference. If any subsequent PCS licensee would have interfered with the microwave incumbent, assuming the microwave incumbent were still operating that link at that frequency, then the PCS licensee which initially paid the microwave incumbent's relocation costs would be entitled to collect from the subsequent PCS licensee a portion of the cost of that relocation.

7. API believes a plan to address the free rider problem is advisable, particularly if it would facilitate the relocation of entire systems or major portions of systems. However, certain aspects of PacBell's specific proposal run counter to expeditious band-clearing. For example, the reimbursement amount would be calculated using a formula that includes a \$600,000 per link price cap for the cost of relocation. The reimbursement amount declines proportionally for each subsequent PCS licensee. PacBell gives no justification or basis for this \$600,000 per link price cap; it appears to be an arbitrary figure.

8. While PacBell's formula would permit the initial PCS licensee to pay more than \$600,000, any payment over \$600,000 would not be reimbursable. Thus, API is concerned that the proposed price cap, as a practical matter, would create an artificial ceiling on the price of a link. If implemented, it could make initial PCS licensees reluctant to pay more than \$600,000 to relocate a microwave link, since any amount paid above \$600,000 could not be pro rated among subsequent PCS licensees for reimbursement to the initial licensee.

9. API recognizes that a workable cost sharing plan is a good idea. It would allow initial PCS licensees the flexibility to negotiate with incumbent microwave licensees

for the voluntary relocation of entire systems or definable portions of large systems. There is no valid reason, however, for a specific price cap. A de facto limit on the price of a link deprives the PCS licensee of the ability to craft an attractive offer to the incumbents, thereby negating the principal benefit of PacBell's plan; namely, freedom to clear the band without unduly benefitting later licensees.

10. The PacBell formula, with its built-in price cap, focuses on individual links rather than an incumbent's entire microwave system. This too is counterproductive because the incumbent's greatest concern is with the integrity of its entire system, which would be greatly impacted by the loss of even one link. API therefore believes that any plan to resolve the free rider issue should be broad enough to cover relocating the incumbent's microwave system, or substantial portions thereof, rather than its individual links. Such a plan should be broad enough even to cover links in spectrum blocks or markets that the particular PCS licensee cannot use. In this way, the incumbent's greatest concern can be satisfied along with those of the early PCS licensees.

11. PacBell's plan assumes that relocation costs will be entirely monetary when, in fact, valuable non-monetary

exchanges may well occur as a result of PCS relocation negotiations. For example, some PCS licensees may bargain for the ability to utilize rights-of-way or space on microwave incumbents' existing towers. Likewise, microwave incumbents may wish to receive free or discounted PCS service as part of a voluntary relocation agreement. In light of these potential non-monetary arrangements, API believes that PacBell's monetary formula should only be used as a general guideline when two or more PCS entities agree to employ it among themselves. The important thing is to create the spectrum interference rights which can be later sold or negotiated; not the formula for calculating their value.

III. CONCLUSION

12. API submits that negotiations during the two-year voluntary negotiation phase should remain unfettered by implicit price caps and regulatory uncertainty. As planned, the two-year voluntary negotiation phase should be governed by free market forces, which will permit voluntary cost sharing agreements among PCS entities following guidelines they establish to meet their specific needs and bargaining positions.

13. PacBell assumes that the negotiation process may be delayed by the reluctance of a PCS licensee to pay for services benefitting later licensees. API believes, however, the pendency of PacBell's Petition itself may needlessly delay -- rather than expedite -- the development of PCS systems. Even if the Commission acts immediately in response to the Petition, it will take months or, perhaps, up to a year to conclude a rule making proceeding. In the meantime, the pendency of the Petition stands to create a disincentive for PCS licensees to negotiate with incumbent microwave users, because the cost sharing/price cap issue will be pending before the Commission. This situation can be resolved, however, by creating the spectrum interference rights suggested by PacBell and letting the initial PCS licensees move quickly to relocate the incumbents' systems.

14. API urges the Commission not to allow PacBell's Petition to become the basis to expand this proceeding into a broad forum for the PCS industry's unsubstantiated allegations of "abuses" by microwave incumbents in the voluntary negotiation proceedings.^{2/} The voluntary negotiation process allows the parties who most highly value

^{2/} See, e.g., Letter of Personal Communications Industry Association to Chairman Reed Hundt, April 28, 1995; and Letter of Personal Communications Industry Association to Regina Keeney, Wireless Telecommunications Bureau, May 24, 1995.

the spectrum to provide the incumbents with an incentive to leave early. This marketplace mechanism was originally crafted by the Commission to accomplish a difficult task. It should be allowed to work. Otherwise, the resulting cloud of uncertainty would be sufficient in itself to chill the nascent voluntary negotiation process and delay the introduction of PCS.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute Telecommunications Committee respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Patt Meyer, a secretary in the law firm of Keller and Heckman, do hereby certify that a copy of the foregoing COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE has been served this 15th day of June 1995 by mailing U.S. First-Class, postage prepaid, to the following:

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